IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-76

STATE OF SOUTH DAKOTA,

Petitioner,

vs.

DONALD OPPERMAN,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE INSTANTER

The Illinois Public Defender Association respectfully requests leave to file a brief as *amicus curiae* instanter.

INTEREST OF THE AMICUS

The Illinois Public Defender Association is an association of attorneys engaged in the defense of indigent clients in criminal cases in Illinois. The question presented in this case, the constitutionality of automobile inventory searches, substantially affects the right of Illinois citizens, including the indigent, to be free of unlawful searches and seizures.

Members of the Association represent the defendant in *People* v. *Clark,* Docket No. 48085, pending in the Illinois Supreme Court, in which the constitutionality of automobile inventories is presented. This Court's decision in the present case will profoundly affect the outcome in *Clark.*

The Association believes that in addition to the factual discussion and review of this Court's prior holdings contained in respondent's brief, it is important to examine critically the policy considerations which have been advanced in support of automobile inventory searches. The brief of *amicus* is addressed to these considerations.

REASON FOR ASKING LEAVE TO FILE INSTANTER

The Illinois Public Defender Association respectfully represents that although this Court granted certiorari in this case on November 3, 1975, and respondent filed a brief on the merits on January 12, 1976 the interest of the Public Defenders' Association became compelling only on January 23, 1976, when the Supreme Court of Illinois agreed to consider the constitutionality of automobile inventory searches in *People* v. *Clark,* Docket No. 48085. The *Clark* case, which will significantly affect the rights of the indigent in Illinois, will be heavily influenced, and possibly determined, by this Court's decision in the present case.

Attorneys for the Public Defender Association promptly contacted counsel for the respondent seeking copies of the briefs filed in this Court. These briefs were received in mid-February and the Association thereupon determined

that its interests were not completely served by respondent's brief. The Association has diligently attempted to prepare the attached brief of *amicus curiae* as quickly as possible to avoid inconvenience to this Court.

Wherefore, the Illinois Public Defender Association asks that leave be allowed to file the attached brief of *amicus curiae* instanter.

Respectfully submitted,

ILLINOIS PUBLIC DEFENDER ASSOCIATION

By: .....

Counsel for Amicus Curiae

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-76

STATE OF SOUTH DAKOTA,

Petitioner,

vs.

DONALD OPPERMAN,

Respondent.

BRIEF OF AMICUS CURIAE, ILLINOIS PUBLIC DEFENDER ASSOCIATION, IN SUPPORT OF THE RESPONDENT

ARGUMENT

ABSENT EXTRAORDINARY CIRCUMSTANCES, POLICE OFFICERS ARE PROHIBITED BY THE FOURTH AMENDMENT FROM SEARCHING AN IMPOUNDED AUTOMOBILE IN ORDER TO INVENTORY ITS CONTENTS.

Amicus asks this Court to reject the position that an automobile impounded by the police must be thoroughly searched and inventoried, and to reject as well the argument that the mere administrative convenience of the po-

lice may take precedence over the constitutionally guaranteed right to freedom from unlawful search and seizure. We suggest that this Court recognize instead the rule that, absent extraordinary circumstances, police officers are prohibited by the Fourth and Fourteenth Amendments from searching an impounded automobile to conduct an inventory.

The rule we request has received increasingly frequent acceptance since its adoption in *United States* v. *Lawson,* 487 F. 2d 468 (8th Cir. 1973). See *State* v. *Boster,* 539 P. 2d 294 (Kan. 1975); *State* v. *Bradshaw,* 41 Ohio App. 2d 50, 322 N.E. 2d 313 (1974); *Commonwealth* v. *Dawson,* ..... S.W. 2d ..... (No. 74-887, Ky. 1975); *United States* v. *Chadwick,* 393 F. Supp. 763 (D. Mass. 1975). Even before the ruling in *Lawson,* the Supreme Court of California found the justifications underlying the inventory concept to be without merit, *Mozzetti* v. *Superior Court,* 4 Cal. 3d 699, 484 P. 2d 84 (1971). Although inventory searches have long been a source of conflicting opinion,[1] the reasoning of the courts in *Lawson* and *Mozzetti* is correct and provides the proper balance between the citizens' right to freedom from improper searches, on the one hand, and the proper functioning of the police, on the other.

Two theories have traditionally been advanced to justify the automobile inventory search; first that an inventory protects the property of the owner of the impounded vehicle, and second that it protects the police from false charges of theft. Neither justification deserves the approval of this Court.

---

[1] 48 ALR 3d 537; "Warrantless Searches and Seizures of Automobiles," 87 Harv. L. R. 835, 848 (1974).

The suggestion that protection of the owner's property justifies a search stands the Fourth Amendment on its head. Absent a specific request for inventory by the owner of an impounded car, it is peculiar, to say the least, to suggest that the police can foist upon him an unsolicited form of protection that involves the opening of his car doors and the inspection of his effects. When a citizen leaves a car on the street, he rolls up his windows, locks his doors, and pockets his key. That is reasonable protection. By the same token, the police, when removing a car, may seal it and guard the keys for the owner. Where a car is left, as Mr. Opperman's car was, locked and unattended for hours, the owner's determination of the necessary security for his property must be deemed sufficient. Where the owner is present at the time of impoundment, his preference should be ascertained, and should govern. Neither the police nor the courts may trade away the right to freedom from unreasonable searches on the speculation that a car owner would prefer different form of protection.

The alternative defense of the inventory search, that it protects the police from unfounded theft charges, is highly speculative as well as legally and logically unsound.

Amicus is not aware of any evidence that inventory searches do, in fact, protect the police from false claims. The Supreme Court of California prohibited the inventory search in 1971, yet neither the petitioner nor *amici* in support thereof have presented any meaningful statistics to support the position that fraudulent claims in California, or other areas where inventory searches have been prohibited, have become a problem to law enforcement officials.

Logic suggests, on the contrary, that the taking of an inventory will not discourage the filing of false claims.

Anyone dishonest enough to bring a false claim against the police will be willing to allege a false inventory. Far from preventing such claims, the inventory procedure may well have the opposite effect since the possibility of theft is more likely to suggest itself to an owner who knows his automobile has been entered than to one who knows his automobile to have been secured only from the outside.

Furthermore, the inventory is of little use in the event that someone does decide to sue the police. It is hardly conclusive in a civil action for loss of property from the vehicle since the article might have been stolen before the inventory or simply omitted from the inventory. The inventory is merely a self-serving document prepared by the police and can hardly be binding upon a claimant. It is doubtful if an inventory, which lists the property found in the vehicle, is of any more use than a signed document by the police stating that the vehicle was not searched, nothing was removed, and the vehicle was locked. Police officials can defend themselves by testifying truthfully in court, where the plaintiff bears the burden of proof. There is no reason to elevate a minimal and speculative danger into a justification for broadly expanded search powers.

On neither of its asserted justifications does the inventory search deserve the approval of this Court. It may be, as was suggested in *Lawson*, that exceptions might be made in an atypical case. Items of obvious value, for example, lying in plain view, might be locked in the trunk or kept at the police station if the car, because of damage, could not be locked. To a limited extent, each case may have to be determined on its own facts.

The soundest rule, however, is to recognize that under normal circumstances the inspection and inventory of the

contents of an impounded automobile is impermissible under the Fourth and Fourteenth Amendments. If the owner is present when his auto is impounded, his preference should be followed. If he is not, then the duty of the police extends no further than locking the car and holding the keys for the owner. Any intrusion into closed compartments, as was done in this case, is a constitutional violation.

CONCLUSION

It is neither wise nor necessary to propound a *per se* rule approving or forbidding all inventories of impounded automobiles. The proper balance must be struck based on the facts of each case. *Amicus* submits, however, that it is only in exceptional circumstances that an inventory search can be constitutionally permissible.

The decision of the Supreme Court of South Dakota represents the correct view of the law, and should be affirmed.

Respectfully submitted,

ILLINOIS PUBLIC DEFENDER ASSOCIATION
JOSHUA SACHS
JOHN T. MORAN
ROBERT E. DAVISON
ROBERT P. ISAACSON
180 N. LaSalle Street
Chicago, Illinois 60601
(312) 263-0982
Counsel for Amicus Curiae